

# State of Missouri

## Office of Secretary of State

Case No. AP-06-03

IN THE MATTER OF:

ALLAN RICHARD BURBACH,  
WADDELL & REED, INC.  
6300 Lamar Ave  
Shawnee Mission, Kansas 66201,

Respondents.

### **CONSENT ORDER**

The Missouri Securities Division alleges that Waddell & Reed, Inc. ("Waddell") failed to supervise an independent financial advisor registered as an agent of Waddell in Missouri and that this constitutes grounds to revoke, bar or censure Waddell's registration in Missouri pursuant to Section 409.204, RSMo 2000. In addition, the Division alleges that financial advisor Allan Richard Burbach ("Burbach") engaged in dishonest or unethical practices in the securities business and that this constitutes grounds to revoke, bar or censure Burbach's registration in Missouri pursuant to Section 409.204, RSMo 2000.

1. Respondents and the Securities Division desire to settle the allegations and the matters raised by the staff of the Securities Division relating to the alleged violations by Respondents;
2. Solely for purposes of these proceedings, Respondents consent to the issuance of this Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein, without admitting or denying the Commissioner's findings or any violation of any provision of chapter 409, RSMo 2000;
3. Respondents waive their right to a hearing with respect to this matter; and
4. Respondents stipulate and agree that Respondents waive any rights Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order and, further, Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.

### **COMMISSIONER'S FINDINGS**

5. On the basis of the matters set forth above, the Securities Division and the Respondents consent to the Commissioner making the following findings:
  - a. Waddell has a main office address of 6300 Lamar Ave, Shawnee Mission, Kansas 66201.

- b. Waddell has been a registered broker-dealer firm in Missouri since July 18, 1983 and is a member of the National Association of Securities Dealers ("NASD"). Waddell is registered with the Central Registration Depository ("CRD") with the number 866.
- c. Burbach has been an independent financial advisor of Waddell since January 29, 1999. Burbach works at Waddell's office located at One Cityplace Dr., Suite 30, Creve Coeur, Missouri 63141. Burbach has been a registered agent in Missouri since February 16, 1999. Burbach is registered with the CRD with the agent number 3181519.
- d. On April 4, 2005, the Missouri Securities Division received a complaint from a Missouri resident ("MR") who was a client of Burbach. MR was a retired 68 year old widow who had investments of over \$344,000 with or through Waddell.
- e. MR told an investigator with the Securities Division, among other things, that:
  - i. In 2000, MR had sold her house and was in the market to buy another property;
  - ii. MR wanted to invest her money until she found an appropriate place to purchase;
  - iii. In addition to the money from the house, MR stated she had stocks, fixed annuities that were paying a 7% return and other investments; and
  - iv. She told Burbach that her house money needed to be safe.
- f. Prior to investing with or through Waddell and Burbach, MR's portfolio had 58% in stocks and stock funds, 40% in fixed guaranteed term annuities and 2% in money market investments.
- g. After investing with or through Waddell and Burbach, MR's portfolio had 94% in stock funds, 2% in bond funds and 4% in money market funds.
- h. On July 13, 2005, in a sworn statement to the Securities Division, Burbach stated that:
  - i. Burbach was a District Manager for Waddell, who helped recruit and train new representatives on products and the financial planning process;
  - ii. In 2000, Burbach did not have a Waddell compliance procedures manual at his desk;
  - iii. Burbach understood that all correspondence with customers had to be pre-approved by Waddell, however, Burbach did not have certain documents Burbach used with MR pre-approved. One such document had projected rates of return of 12%;
  - iv. Burbach did not tell MR about breakpoint discounts that became available to her upon her second purchase of mutual funds;

- v. Burbach invested MR's "house money" into the United Income B share mutual fund;
- vi. Burbach agreed that mutual funds were not an appropriate investment for someone who was going to buy a house within a year.
- i. Based upon information provided to the Division, Burbach invested over \$300,500 of MR's money in various B share mutual funds.
- j. Upon Burbach's recommendation MR exchanged over \$98,000 in fixed annuities for a variable annuity and B share equity mutual funds costing MR over \$5,000 in surrender fees.
- k. Waddell's Compliance Manual in effect on the date of these investments stated, among other things, that:

...Purchases of Class B share shares for \$300,000 or more must be accompanied by...a letter signed by ...the client in which the client acknowledges that Class A shares would be a less costly alternative but the client desires to buy Class B shares for some other specific reason.
- l. Burbach did not obtain such a letter from MR.
- m. Burbach provided correspondence to MR showing projected returns of 12% that:
  - i. Were not pre-approved by Waddell; and
  - ii. Did not contain a legend stating that past performance is no guarantee of future performance.
- n. Waddell has submitted information to the Securities Division detailing changes it has made to its supervisory procedures, including, but not limited to:
  - i. Waddell generates the following supervisory reports:
    - Large Value Transactions Report - Daily report listing mutual fund purchases in excess of \$100,000. Shows Class A, B, C and Y share purchases. This report is used by the Compliance Department to assess suitability of large mutual fund purchases and was put into effect in February/March of 2000.
    - B or C Share Purchase Report - Monthly report detailing all purchases in a 12-month period in B or C share funds totaling a value greater than or equal to \$100,000. This report is used by the Compliance Department to assess suitability of share class recommendations and was put into effect in February/March of 2000.
    - Purchase/Redemption Analysis Report - Monthly report detailing purchases and redemptions in the same account within a 60 day

period where the purchase and/or redemption amount is greater than or equal to \$25,000. This report is used by the Compliance Department to monitor excessive trading activity and was put into effect in February/March of 2000.

- Variable Product Guideline Exception Report - Daily report of variable product recommendations requiring Compliance Department review due to age or net worth of client, CDSC amount, investment amount or other suitability issues. This report is used by the Compliance and Customer Service and was put into effect in January 2002.
  - B Share Consolidated Error Report - Bi-Monthly report reviewing all B Share trades that hit the ROA Maximum Error report when the gross amount is greater than \$10,000.00. This report is used by the Compliance to monitor B Share Class limitations and was put into effect July 1, 2005.
- ii. Waddell's Division Managers conduct compliance certification meetings two times a year. The Division Managers review the compliance/supervisory manual, any compliance alerts that have been sent from the Home Office since the last meeting, any significant regulatory changes, and case studies involving suitability/product appropriateness. These meetings are mandatory and each financial advisor and the Division Manager must certify at the end of the meeting that they have attended the same by signing a log. If a financial advisor misses one of the compliance meetings, he/she must schedule a time with their division manager to a make-up meeting. These certification meetings are a continuing activity
  - iii. Waddell has enhanced its supervisory procedures to assist in detecting and preventing customer account abuses by its financial advisors, in particular, its supervisory activities relating to the suitability of purchases and sales of securities including annuities. Waddell has developed and distributed to all registered principals and financial advisors a system identifying "red flags" that may warrant the rejection of variable annuity, variable life and mutual fund sales. The red flag system for the variable products has been in effect since 2000 however, enhancements have been made to the system as recently as July 2005.
  - iv. Waddell has mandatory training for advisors to meet the NASD CE firm element. While the NASD only requires one firm element training session a year, Waddell requires that its Division Managers and financial advisors attend two firm element classes a year. Case studies used during these sessions typically include mutual fund issues, insurance product issues and their appropriate use and suitability. These case studies are used beyond just the bi-annual compliance meetings held in each office. Wholesalers use the case studies to further instill appropriate use and suitability concepts and the financial planning department also provides a broad background of information to enable the Division Managers and financial advisors to better understand important

product/suitability/compliance issues. The NASD CE firm element training is a continuing process.

- v. Since late 2002, all Division Managers, District Managers and financial advisors have direct access to the compliance/supervisory manual by accessing Waddell's webpage, eSource, from their computer. eSource is an on-line resource that provides financial advisors with access to recent compliance alerts, the compliance manual, professional development tools, suitability forms, spreadsheet analysis, NASD web-links, conference updates, and symposiums. In 2004, Waddell began supplementing the compliance/supervisory manual with any procedure changes by posting a supplement to the manual.
- vi. Waddell requires that all new Division Managers attend training at the home office. The weeklong training program covers compliance/suitability review, business processing, asset allocation, financial planning, insurance products and mutual funds. One of the biggest components of this training is the compliance component.

### **JURISDICTIONAL BASIS**

- 6. Solely for purposes of these proceedings, Respondents and the Division stipulate and agree that:
  - a. the Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act, Chapter 409, et al.;
  - b. the Commissioner has authority to enter this Consent Order pursuant to Section 409.408, RSMo 2000, which provides:
 

[T]he commissioner shall have full power in each case to make such order or orders under this section as he may deem just and he may either prohibit the further sale by such persons of any securities connected with or related to said fraudulent or illegal practices or transaction, or he may fix the terms and conditions on which the sale of such securities may be made...and it is hereby made unlawful for any person having been served with any such order, or having knowledge of the issuance of said order, while said order remains in effect, either as originally issued or as modified, to violate any provisions thereof.
  - c. the Commissioner has authority to censure Respondents pursuant to §409.204, RSMo 2000, which provides:

The Commissioner may by order . . . suspend, or revoke...or censure any registration. . . if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(G) Has engaged in dishonest or unethical practices in the securities business;

(J) Has failed reasonably to supervise his agents or employees if he is a broker-dealer, or his adviser representatives or employees if he is an investment adviser...

## **ORDER**

**WHEREAS**, the Commissioner, after consideration of the stipulations and findings set forth above and with the consent of Respondents and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo 2000.

**NOW, THEREFORE**, it is hereby Ordered that:

1. Burbach's registration is censured;
2. Burbach is suspended from registration for a period of 10 business days beginning on January 11, 2006;
3. Burbach will not act in a supervisory capacity at any broker-dealer or investment adviser for a period of two (2) years unless specific approval is granted by the Securities Division;
4. For a period of one (1) year, Burbach is prohibited from acting as an agent or investment adviser representative in Missouri, unless his employing firm provides heightened supervision of Burbach's activities. This heightened supervision should include, a weekly review of Burbach's new accounts and correspondence by a registered principal to ensure that all correspondence and documents provided to investors have been approved and that trades are authorized, suitable and comply with the supervisory and compliance policies and procedures set forth by his employing firm;
5. Waddell shall on a quarterly basis beginning January 1, 2006 through December 31, 2006 submit reports describing any customer complaints it receives from Missouri residents to the Securities Division.
6. Waddell will continue to review its procedures and the implementation of these procedures to identify gaps in its regulatory structure.
7. Waddell is ordered to Cease and Desist from violating, or materially aiding others in the violation of the securities laws by failing to adequately supervise its agents in the state of Missouri;
8. Respondent Waddell is ordered to pay restitution to MR in the amount of ninety thousand, three hundred sixty-one dollars and forty-nine cents (\$90,361.49). Respondent Waddell shall send to the Securities Division within 10 days of the execution of this Consent Order a copy of this check and documentation that the check was sent by registered mail to MR;
9. Respondent Burbach is ordered to disgorge all commissions and fees generated by

MR's accounts in the amount of six thousand, five hundred and ninety six dollars (\$6,596). This amount shall be immediately due and payable to MR. Respondent Waddell shall send to the Securities Division within 10 days of the execution of this Consent Order a copy of this check and documentation that the check was sent by registered mail to MR;

10. Respondent Waddell is ordered to pay a civil penalty of seventy-five thousand dollars (\$75,000) made payable to the State of Missouri, and delivered to the Securities Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Such amount shall be due and payable within ten (10) business days from date that this Consent Order is entered;
11. Respondent Waddell is ordered to pay \$6,800 as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be immediately due and payable, and shall be submitted to the Securities Division; and
12. Respondents will pay their own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 10TH DAY OF JANUARY, 2006.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
ACTING COMMISSIONER OF SECURITIES

**Consented to by:**

MISSOURI SECURITIES DIVISION  
Mary S. Hosmer  
Assistant Commissioner of Securities

Allan Richard Burbach

Waddell & Reed, Inc.

*Approved as to form:*

John Short  
Counsel for Respondents